

### **REMARKS**

In response to the Office Action of September 20, 2010, the Applicant respectfully requests reconsideration. Claims 1, 3, 6-10, 13-21, 24, 27, 31-32, 44, 46, 57, 59, 60, 71-77, 79 were pending in this application. Each of claims 1, 7, 9, 13, 16, 18, 20, and 77 is amended herein. No new claims have been canceled or added. As a result, claims 1, 3, 6-10, 13-21, 24, 27, 31-32, 44, 46, 57, 59, 60, 71-77, and 79 are pending for examination, with claims 1, 20, 24, 27, 44, and 57 being independent. No new matter has been added.

### **Rejections under 35 U.S.C. §103**

The Office Action rejects claims 1, 3, 6-10, 13-21, 24, 26, 27, 31-39, 44, 46, 57, 59, 60, 71-77, 79 under 35 U.S.C. §103(a) as purportedly being unpatentable over McCann et al. (US Pat. No. 5,740,037) in view of Theimer et al. (US Pat. No. 5,555,376), and further in view of Smyth (US Pat. No. 5,689,619), and further in view of Chai (US Pat. No. 6,615,197). The Applicant respectfully traverses these rejections, as one of ordinary skill in the art would not have been led to make the alleged combination given the teachings of the references.

#### **I. Comments Regarding Previously Cancelled Claims**

The Office Action rejects claims 26, and 33-39 under 35 U.S.C. §103. However, the Applicant notes that claims 26, and 33-39 were previously canceled without prejudice or disclaimer.

#### **II. Discussion of Smyth**

Smyth discloses an “adaptive display interface” that “automatically aids the user in display operations during high manual task loading” (Smyth, Abstract).

Smyth teaches that: “The invention generates display cueing to aid the user in its operation during periods of high loading on the manual control task. ... The user can easily operate the display in this manner at low manual control task loadings; however, this strategy can only be maintained at high manual control loadings with cueing aids, since the high loading of the manual control task **continually interrupts** his attention to the display ... (emphasis added)” (Smyth, col. 4, lines 2-16).

Regarding the display cueing, Smyth further teaches: “In the automated mode, the invention acts as a ‘smart cuer’ providing display cueing that responds naturally to the control task loading on the user as indicated by his response time and eye movements. ... As the task loading increases, the invention enhances the gazed element as feedback to the user and the time window for a capture action is expanded. Finally, as the task loading reach [sic] an excessive level, the eye movements of the user during display operation become erratic and the invention displays gaze control cues to aid him” (Smyth, col. 4, lines 42-53).

### III. Discussion of Chai

Chai is understood to describe a system to make people more intelligent (Chai, col. 1, line 23). In particular, Chai discloses “a signaling system for the improvement of cognitive performance and intelligence” (Chai, Abstract).

Chai teaches: “In the embodiment of the invention using visual reinforcing pulses, the direct current pulses from electronic circuits drive a pair of light emitting diodes seen by the person at symmetrical, or conjugal positions in the left and right peripheral field of vision” (Chai, col. 11, lines 53-57).

### IV. The Alleged Combination of McCann, Theimer, Smyth and Chai is Improper

The Office Action asserts: “It would have obvious to one skilled in the art at the time of the invention to learn from Chai presenting a visual indicator in peripheral vision of the user. Presenting the data in peripheral vision of the user allows for the user to view data without being overloaded with information on the main view. This provides motivation for McCann, Theimer and Smyth to present data in the peripheral vision of the user. (Office Action, pp. 9-10). The Applicant respectfully disagrees.

One of skill in the art would not have been led to modify McCann, Theimer, Smyth based upon Chai in the manner alleged by the Office Action. The purported motivation for one of skill in the art to have made the alleged combination is entirely unsupported, and the cited art in fact *teaches away* from the alleged combination.

The modification the Office Action alleges one skilled in the art would have made based upon the teachings of Chai is incompatible with the express teaching of Smyth. As highlighted in the above quotations, Smyth teaches that smart cueing helps the user to operate the display more easily during high cognitive loading. To introduce a pair of blinking LEDs into the peripheral vision of the user would serve the opposite purpose, by distracting the user from operating the display more efficiently. This stands in direct contrast with the express teachings of Smyth about compensating for the continual interruption of the user's attention to the display (Smyth, col. 4, lines 14-16).

For at least these reasons, the Applicant respectfully submits that no proper, supported reason has been made of record for why a person of skill in the art would have been led to modify Smyth based upon the teachings of Chai to present a visual indicator in peripheral vision of the user. Thus, it is believed that each of independent claims 1, 20, 24, 27, 44, and 57 patentably distinguishes over the prior art of record. Claims 3, 6-10, 13-19 depend from claim 1, claim 21 depends from claim 20, claims 31-32 depend from claim 27, claim 46 depends from claim 44, claims 59, 60, and 71-77 depend from claim 57, and each is patentable for at least the same reasons as the independent claim from which it depends.

V. The Claims Distinguish over Smyth

Smyth does not teach the features for which it is cited such that, even if the references were combined, the combination would not meet all limitations of any claim.

The Office Action asserts: "Smyth discloses selecting a user interface including an amount of background information that is less than the user has the availability to receive. See column 4, lines 41-61. It would have been obvious to one skilled in the art at the time of the invention to learn from Smyth dynamically selecting based on determination of a quantity of information the user has cognitive availability to receive in a background mode. Smyth discloses providing more user interface options for a user operating a user interface under military operations...." (Office Action, pg. 4). The Applicant respectfully disagrees.

The cited lines of Smyth do not teach selecting a user interface including an amount of background information that is less than the user has the availability to receive. Rather, the cited passages of Smyth teach how to automatically aid the user in controlling the display based on the cognitive load of the user (Smyth, col 4. lines 41-61). Smyth is silent with regard to measuring the amount of information that the user has the availability to receive. Therefore, Smyth does not teach the limitation of independent claims 1 and 20 of “selecting a user interface including an amount of background information that is less than the user has the availability to receive.” Thus, it is believed that each of independent claims 1, and 20 patentably distinguishes over the prior art of record. Claims 3, 6-10, 13-19 depend from claim 1, and claim 21 depends from claim 20, and each is patentable for at least the same reasons as the independent claim from which it depends.

#### General Comments on Dependent Claims

Each of the dependent claims depends from a base claim that is believed to be in condition for allowance, and Applicants believe that it is unnecessary at this time to argue the allowability of each of the dependent claims individually. Applicants do not, however, necessarily concur with the interpretation of the dependent claims as set forth in the Office Action, nor do Applicants concur that the basis for the rejection of any of the dependent claims is proper. Therefore, Applicants reserve the right to specifically address the patentability of the dependent claims in the future, if deemed necessary.

**CONCLUSION**

In view of the above amendment, applicant believes the pending application is in condition for allowance. Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 23/2825 under Docket No. M1103.70778US00 from which the undersigned is authorized to draw.

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